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Robert Moser, MD, Secretary

Department of Health & Environment

Sam Brownback, Governor

August 3, 2011

Barbara Dominguez
Office of the Secretary of State
120 SW 10th St.
Topeka KS 66612

RE: Publication of Notice of Hearing
KAR 28-31-10

Dear Ms. Dominguez:

Attached are two copies of the notice of hearing for the above-referenced permanent amended KDHE Article 31 regulation. The public hearing is scheduled for October 17, 2011, at 1:30 p.m. in Room 530, Curtis State Office Bldg., Topeka. Please cause the notice to be published in the *Kansas Register*.

Also attached are two copies of this regulation as approved and stamped by the Department of Administration and the Attorney General. Two copies of the regulatory impact statement are also included.

If you have any questions or need any further information regarding filing of the notice of hearing, please contact Susan Vogel at 296-1291 or svogel@kdheks.gov.

Sincerely,


for Robert Moser, M.D.

Robert Moser, MD
Secretary of Health and Environment

Attachments

pc w/notice of hearing only
Rep. Carl Holmes, Chair, Joint Committee on Rules and Regulations
Sen. Vicki Schmidt, Vice Chair, Joint Committee on Rules and Regulations
Rep. Janice Pauls, Ranking Minority Member, Joint Committee on Rules and Regulations
Raney Gilliland, Legislative Research

STATE OF KANSAS

Department of Health and Environment

Notice of Hearing on Proposed Administrative Regulations

The Kansas Department of Health and Environment, Division of Environment, Bureau of Waste Management (BWM), will conduct a public hearing at 1:30 p.m. Monday, October 17, in Room 530 of the Curtis State Office Building, 1000 S.W. Jackson, Topeka, to consider the adoption of proposed amendments to hazardous waste regulation K.A.R. 28-31-10 concerning hazardous waste monitoring fees. A summary of the proposed regulation, the estimated economic impact and the environmental benefit follows:

K.A.R. 28-31-10. The Kansas hazardous waste program monitors hazardous waste activities in the state and is funded by a federal grant and various fees paid by the generators, transporters, and handlers of hazardous waste. The maximum fee for each facility is limited by statute to \$50,000 annually. Current fees range from \$100 to \$15,000 per year.

The fee revenue currently collected is inadequate to meet the projected budgetary needs of the hazardous waste regulatory program, even with reduced program staffing. This proposed amended regulation increases the annual monitoring fees for treatment, storage, and disposal (TSD) facilities and hazardous waste generators, while reducing the fees for hazardous waste transporters to reflect the actual level of staff monitoring required for these activities. The proposed fee changes are shown in the following schedule. The number of facilities of each type is indicated in parentheses.

<u>Type of facility</u>	<u>Current Fee</u>	<u>Proposed Fee</u>
On-site storage (2).....	\$7,500.....	\$12,500
Off-site storage (4).....	\$8,000.....	\$13,500

On-site nonthermal treatment (0).....	\$7,500.....	\$12,500
Off-site nonthermal treatment (2)	\$8,000.....	\$16,500
On-site thermal treatment (2).....	\$8,000.....	\$16,500
Off-site thermal treatment (2)	\$12,000.....	\$22,000
On-site landfill or underground injection well (1).....	\$10,000.....	\$18,500
Off-site landfill or underground injection well (0)	\$15,000.....	\$20,000
Postclosure care (14).....	\$10,000.....	\$16,500
Transporters (83).....	\$300.....	\$200
Large Quantity Generator:		
<= 5 tons (48).....	\$250.....	\$300
5 to 50 tons (90)	\$750.....	\$900
50 to 500 tons (37)	\$2,500.....	\$2,800
> 500 tons (13)	\$7,500.....	\$8,000
Small Quantity or Kansas Small Quantity Generator (1496)	\$100.....	\$150

The “incinerator facility” category has been removed since incineration is a type of thermal treatment. In addition, a typographical error in paragraph (b)(3) will be corrected.

Economic Impact: The estimated annual increase in cost to the TSD universe is \$185,500. Hazardous waste generator fees will increase by \$108,300. Hazardous waste transporters will save a combined total of \$8,500 each year. This results in a total of increased costs to the regulated hazardous waste community of \$285,500. There is no increase in costs to the agency. There is no cost to other governmental agencies or units or the general public unless they are part of the hazardous waste management system.

Environmental Benefit: The proposed changes to hazardous waste fees do not provide

direct environmental benefits. However, failure to sustain an adequate state regulatory program due to a budget shortfall could result in serious environmental impacts.

The time period between the publication of this notice and the scheduled hearing serves as the required public comment period of at least 60 days for the purpose of receiving written public comments on the proposed regulatory action. All interested parties may submit written comments prior to 5 p.m. October 17 to Christine Mennicke, Kansas Department of Health and Environment, Bureau of Waste Management, 1000 SW Jackson, Suite 320, Topeka, 66612, by fax to (785) 296-8909, or by e-mail to cmennicke@kdheks.gov. During the hearing, all interested parties will be given a reasonable opportunity to present their views orally on the proposed regulatory action as well as an opportunity to submit their written comments. In order to give all parties an opportunity to present their views, it may be necessary to require each participant to limit any oral presentation to five minutes.

Copies of the proposed regulation and the corresponding regulatory impact statement may be obtained on the BWM Web site at www.kdheks.gov/waste/ or by contacting Christine Mennicke at (785) 296-0724 or cmennicke@kdheks.gov. Questions pertaining to the proposed regulation should be directed to Christine Mennicke.

Any individual with a disability may request accommodation in order to participate in the public hearing and may request the proposed regulation and the corresponding regulatory impact statement in an accessible format. Requests for accommodation to participate in the hearing should be made at least five working days in advance of the hearing by contacting Christine Mennicke.

Robert Moser, MD

Secretary of Health and Environment

28-31-10. Hazardous waste monitoring fees. Each reference in this regulation to a federal regulation shall mean that federal regulation as adopted by reference in K.A.R. 28-31-124 through 28-31-279. (a) Fee requirement. Each of the following persons shall pay an annual monitoring fee to the department according to the requirements of subsections (b) through (e):

- (1) Each owner or operator of a hazardous waste treatment, storage, or disposal facility;
- (2) each hazardous waste transporter; and
- (3) each hazardous waste generator.

(b) Hazardous waste treatment, storage, or disposal facilities. The owner or operator of each facility shall pay the annual monitoring fee before January 1 of each year.

(1) The fee for each active facility shall be based on the following schedule:

(A) On-site storage facility	\$ 7,500	<u>\$12,500</u>
(B) Off-site storage facility	\$ 8,000	<u>\$13,500</u>
(C) On-site nonthermal treatment facility	\$ 7,500	<u>\$12,500</u>
(D) Off-site nonthermal treatment facility	\$ 8,000	<u>\$16,500</u>
(E) On-site thermal treatment facility	\$ 8,000	<u>\$16,500</u>
(F) Off-site thermal treatment facility	\$12,000	<u>\$22,000</u>
(G) Incinerator facility		<u>\$12,000</u>
(H) On-site landfill or underground injection well	\$10,000	<u>\$18,500</u>
(H) (<u>H</u>) Off-site landfill or underground injection well	\$15,000	<u>\$20,000</u>

(2) The fee for each facility subject to postclosure care shall apply upon receipt by the department of the certification of closure specified in 40 CFR 264.115 or 40 CFR 265.115. This fee shall be ~~\$10,000~~ \$16,500.

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(3) The owner or operator of each facility conducting more than one of the hazardous waste activities specified in paragraphs (a) ~~(b)~~(1) and (2) shall pay a single fee. This fee shall be in the amount specified for the activity having the highest fee of those conducted.

(c) Hazardous waste transporters. Each hazardous waste transporter shall pay the annual monitoring fee when the transporter registers with the department in accordance with K.A.R. 28-31-6, and before January 1 of each subsequent year. This fee shall be ~~\$300~~ \$200.

(d) Hazardous waste generators.

(1) Each large quantity generator shall pay the annual monitoring fee before March 1 of each year.

(A) The fee shall be based on all hazardous waste generated during the previous calendar year according to the following schedule:

Total Yearly Quantity Generated	Monitoring Fee
Less than or equal to 5 tons	\$250 <u>\$300</u>
Greater than 5 tons but less than or equal to 50 tons	\$750 <u>\$900</u>
Greater than 50 tons but less than or equal to 500 tons	\$2,500 <u>\$2,800</u>
Greater than 500 tons	\$7,500 <u>\$8,000</u>

(B) Each large quantity generator that reclaims hazardous waste on-site to recover substantial amounts of energy or materials shall be exempt from payment of monitoring fees for the amount of hazardous waste reclaimed. This exemption shall not apply to hazardous waste residues produced during reclamation.

(2) Each small quantity generator and each Kansas small quantity generator shall pay the annual monitoring fee of ~~\$100~~ \$150 before April 1 of each year.

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(e) Monitoring fee payments. Each monitoring fee payment that is made by check or money order shall be made payable to the "hazardous waste management fund - Kansas department of health and environment." (Authorized by and implementing K.S.A. 65-3431; effective, E-82-20, Nov. 4, 1981; effective May 1, 1982; amended, T-85-2, Jan. 13, 1984; amended May 1, 1984; amended, T-85-42, Dec. 19, 1984; amended May 1, 1985; amended, T-86-32, Sept. 24, 1985; amended May 1, 1986; amended, T-87-49, Dec. 19, 1986; amended May 1, 1987; amended May 1, 1988; amended April 25, 1994; amended March 22, 1996; amended June 4, 1999; amended Sept. 20, 2002; amended Oct. 29, 2004; amended April 29, 2011; amended P-_____.)

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Kansas Department of Health and Environment

Regulatory Impact Statement

pursuant to K.S.A. 77-416

Proposed Amended Regulation K.A.R. 28-31-10

August 3, 2011

Executive Summary of Proposed Regulations

In October of 1985, the Kansas Department of Health and Environment (KDHE) obtained authorization from the U.S. Environmental Protection Agency (EPA) to administer the hazardous waste management program. The Kansas hazardous waste program regulates hazardous waste generators, hazardous waste transporters, and hazardous waste treatment, storage, and disposal (TSD) facilities. The program monitors hazardous waste activities in the state by issuing and maintaining permits, conducting compliance inspections, overseeing corrective actions, and responding to complaints that allege the mismanagement of hazardous waste.

The cost to administer the Kansas hazardous waste management program is funded by a federal grant and various fees paid by the generators, transporters, and handlers of hazardous waste. No state general funds are used to support this program although some program efforts, such as complaint investigations, address issues unrelated to fee payer activities. The federal grant has remained fairly constant for more than 15 years so the state fees have had to provide an increasing percentage of total program costs in accordance with inflation.

To cover part of KDHE's cost of monitoring hazardous waste activities, K.S.A. 65-3431(u) authorizes KDHE to collect fees from TSD facilities, hazardous waste transporters, and hazardous waste generators. The maximum fee for each facility is limited to \$50,000 annually. Current fees range from \$100 to \$15,000 per year. The fee revenue currently collected is inadequate to meet the projected budgetary needs of the hazardous waste regulatory program. It was determined that most fees must be increased in calendar year 2012 to sustain necessary hazardous waste program activities.

KDHE prepared an initial proposal for an increase in some monitoring fees and initiation of new TSD permit maintenance fees to maintain the current level of service. This proposal was shared with the universe of facilities that pay hazardous waste fees. Comments were received which resulted in a change to the original proposal. Based upon industry/business comments, KDHE has decided to move forward with an increase in facility monitoring fees only, in combination with some reduction in program staff size. The original proposal to include a TSD permit maintenance fee in addition to the fixed monitoring fee has been eliminated.

In response to fee payer comments, KDHE evaluated program needs and determined that the current staffing level can be reduced to some degree without jeopardizing program approval by the U.S. Environmental Protection Agency. The proposed fee increase is based upon a 10 percent reduction in staff effort related to monitoring hazardous waste generators, which number more than 1500, and a 15 percent reduction in staff effort related to monitoring permitted TSD facilities, which number 34. KDHE proposes to hold several currently vacant positions open and not fill any new vacancies related to hazardous waste program until the proposed reductions are achieved. There will be some program impacts associated with the proposed reductions in staff;

however, it is believed that the department will still be able to demonstrate program adequacy to the U.S. Environmental Protection Agency.

This proposed regulation increases the annual monitoring fees for TSD facilities and hazardous waste generators. The fees for hazardous waste transporters will be reduced, to reflect the actual level of staff monitoring required for this activity. The hazardous waste monitoring fees for TSDs and Large Quantity Generators (LQGs) have not been adjusted since October 29, 2004. The hazardous waste monitoring fees for hazardous waste transporters, Small Quantity Generators (SQGs), and Kansas Small Quantity Generators (KSQGs) have not been adjusted since September 20, 2002. The proposed fee increases were established to generate enough revenue to satisfy the reduced program staffing budget estimates. Also, the proposed new fee amounts were determined based upon staff effort and operating costs related to actual time spent on generator and TSD work. Thus, generator fees should not subsidize staff work on TSDs nor should TSD fees subsidize work on generators. The proposed fee changes are shown in the following schedule:

<u>TSD Designation</u>	<u>Current Fee</u>	<u>Proposed Fee</u>
On-site storage facility	\$7,500.....	\$12,500
Off-site storage facility	\$8,000.....	\$13,500
On-site nonthermal treatment facility	\$7,500.....	\$12,500
Off-site nonthermal treatment facility	\$8,000.....	\$16,500
On-site thermal treatment facility	\$8,000.....	\$16,500
Off-site thermal treatment facility	\$12,000.....	\$22,000
On-site landfill or underground injection well	\$10,000.....	\$18,500
Off-site landfill or underground injection well	\$15,000.....	\$20,000
Facilities subject to postclosure care.....	\$10,000.....	\$16,500

The “incinerator facility” category has been removed since incineration is a type of thermal treatment.

<u>Transporters</u>	<u>Current Fee</u>	<u>Proposed Fee</u>
Hazardous Waste Transporters	\$300	\$200

<u>Generator Category</u>	<u>Current Fee</u>	<u>Proposed Fee</u>
LQG: 5 tons or less	\$250	\$300
LQG: 5 to 50 tons	\$750	\$900
LQG: 50 to 500 tons	\$2,500	\$2,800
LQG: more than 500 tons	\$7,500	\$8,000
SQG & KSQG.....	\$100	\$150

In Fiscal Year 2011, KDHE collected approximately \$672,000 in generator and TSD monitoring fees combined. Projected annual revenue after the fee changes would be about \$957,500. These additional revenues should support the continued operation of the Kansas hazardous waste program for the next several years.

In addition, a typographical error in paragraph (b)(3) will be corrected.

Environmental Benefit Statement

1) Need for proposed amendments and environmental benefit likely to accrue

a. Need

Current fee revenue will not adequately sustain the Kansas hazardous waste program after State Fiscal Year 2012. Without the fee increase, the state hazardous waste program would require a major staff reduction which would jeopardize program adequacy as determined by the U.S. EPA. All of the citizens of Kansas benefit from the state hazardous waste program because it provides regulatory oversight related to the management of wastes that would impact human health and the environment if mismanaged. The businesses of Kansas have repeatedly indicated their preference for a state regulatory program in lieu of having all permitting and enforcement being carried out by the U.S. EPA. In addition, businesses benefit from the technical training and assistance offered by KDHE.

b. Environmental benefit

The proposed changes to hazardous waste fees do not provide direct environmental benefits; however, failure to sustain an adequate state regulatory program due to a budget shortfall could result in serious environmental impacts. Before a state hazardous waste regulatory program was established, hazardous wastes were mismanaged and numerous contaminated sites were created, many of which are still undergoing long-term clean-up. The preventive nature of this program has virtually eliminated the formation of new contaminated sites caused by hazardous waste mismanagement. Some return to such problems could result if the state program is not maintained.

2) When applicable, a summary of the research or data indicating the level of risk to the public health or the environment being removed or controlled by the proposed regulations or amendments

Risk is not being reduced by increasing hazardous waste fees as proposed; however, failure to raise fees would increase the risk associated with mismanagement of hazardous waste because the preventive aspects of the program would be reduced or perhaps eliminated if the U.S. EPA determined the shrinking program to be inadequate.

3) If specific contaminants are to be controlled by the proposed regulation or amendment, a description indicating the level at which the contaminants are considered harmful according to current available research

Not applicable.

Economic Impact Statement

1) Are the proposed regulations or amendments mandated by federal law as a requirement for participating in or implementing a federally subsidized or assisted program?

The fee increase is not mandated by federal law; however, the U.S. EPA does routinely evaluate the adequacy of the state hazardous waste regulatory program. Failure to maintain adequacy with respect to staff resources and outputs could result in EPA action to withdraw program approval.

2) Do the proposed regulations or amendments exceed the requirements of applicable federal law?

No.

3) Description of costs to agencies, to the general public and to persons who are affected by, or are subject to, the regulations:

a. Capital and annual costs of compliance with the proposed regulations or amendments and the persons who will bear those costs.

There is no cost to the agency or the general public unless they are part of the hazardous waste management system. The estimated annual cost to each hazardous waste TSD facility, transporter, and generator due to the proposed increase in the monitoring fee follows.

<u>Category</u>	<u>number in Kansas</u>	<u>increase /facility</u>	<u>total increase</u>
TSD: On-site storage.....	2.....	\$5,000.....	\$10,000
TSD: Off-site storage.....	4.....	\$5,500.....	\$22,000
TSD: On-site nonthermal treatment.....	0.....	\$5,000.....	\$0
TSD: Off-site nonthermal treatment.....	2.....	\$8,500.....	\$17,000
TSD: On-site thermal treatment.....	2.....	\$8,500.....	\$17,000
TSD: Off-site thermal treatment.....	2.....	\$10,000.....	\$20,000
TSD: On-site landfill or underground injection well.....	1.....	\$8,500.....	\$8,500
TSD: Off-site landfill or underground injection well.....	0.....	\$5,000.....	\$0
TSD: Post-closure care	14.....	\$6,500.....	\$91,000
Transporter.....	83	-\$100.....	-\$8,300
LQG: 5 tons or less	48.....	\$50.....	\$2,400
LQG: 5 to 50 tons	90.....	\$150.....	\$13,500
LQG: 50 to 500 tons	37.....	\$300.....	\$11,100
LQG: more than 500 tons	13.....	\$500.....	\$6,500
<u>SQG & KSQG.....</u>	<u>1496.....</u>	<u>\$50.....</u>	<u>\$74,800</u>
Total of increases for all facilities.....			\$285,500

b. Initial and annual costs of implementing and enforcing the proposed regulations or amendments, including the estimated amount of paperwork, and the state agencies, other governmental agencies or other persons or entities who will bear the costs.

There will be no initial or annual costs to implement or enforce this regulation.

c. Costs which would likely accrue if the proposed regulations or amendments are not adopted, the persons who will bear the costs, and those who will be affected by the failure to adopt the regulations.

If the proposed increases in hazardous waste monitoring fees are not adopted, KDHE would have to significantly reduce hazardous waste management program staff and monitoring activities. If the U.S. EPA determines that the reduced state resources cannot adequately administer the hazardous waste program, the authority to run the program and the associated federal funding would be withdrawn. Each year EPA provides approximately \$1,160,000 to the state to manage the hazardous waste program.

d. A detailed statement of the data and methodology used in estimating the costs used in the statement.

The estimated cost of implementing the proposed regulation was calculated based upon the number of facilities currently paying fees in each regulated category (KDHE's current data base) and the proposed change in the fee for each specific type of facility.

e. Description of any less costly or less intrusive methods that were considered by the agency and why such methods were rejected in favor of the proposed regulations.

This regulation is designed to generate the revenue needed to sustain the state hazardous waste program at a reduced staffing level. Current statutory authority allows a variety of fees to be collected from the facilities that generate and manage hazardous waste. No less intrusive or costly methods were identified based upon existing statutory authority. This regulatory approach will spread the costs most evenly among all affected hazardous waste generators and handlers. The fee schedules were developed to ensure that generator fees are adequate to pay for generator staff efforts and TSD fees are adequate to pay for TSD staff effort.

f. Consultation with League of Kansas Municipalities, Kansas Association of Counties, and Kansas Association of School Boards.

Municipalities, counties, and school boards will not incur any costs as a result of the regulatory changes unless they are a generator of hazardous waste. A copy of this Regulatory Impact Statement will be sent to each of these organizations at the start of the public comment period.

John Heim, Executive Director
Kansas Association of School Boards
1420 S.W. Arrowhead Rd.
Topeka, KS 66604

Randy Allen, Director
Kansas Association of Counties
300 S.W. 8th, 3rd Floor
Topeka, KS 66603

Don Moler, Executive Director
League of Kansas Municipalities
300 S.W. 8th
Topeka, KS 66603